

**City of Taylorsville
Board of Adjustment
Minutes
August 16, 2005**

PRESENT:

BOARD OF ADJUSTMENT

Scott Lundberg, Chair
Bruce Holman
Ken Cook
Lynn Marsh
Donna Jackson
Steven E. Wilde

COMMUNITY DEVELOPMENT DEPARTMENT

Nick Norris, City Planner/Code Enforcement
Jean Gallegos, Administrative Assistant/Recorder

PUBLIC: Gary Gilgen, Mark Curtis, Joe Crow, Farley Eskelson, Shanna Gilmore, Marty Price, Merle Woodbury, Gene Ninomiya

[18:33:50](#)

WELCOME: **Chairman Lundberg** welcomed those present, explained the procedures to be followed this evening and opened the meeting at 6:30 p.m.

1. 3B05 **Mark Curtis, 5072 South 1130 West** - Request for Variance to Allow a Single Family Residence to be Constructed on a Lot Under One Half Acre Accessed by a Private Road. Nick Norris – City Planner.

[18:35:07](#)

1.1 **Mr. Norris** oriented on the site plan, aerial map and image. The applicant is requesting a variance in order to construct a home on a lot that is under a half acre located on a private road. Taylorsville City Ordinance allows up to three lots that are under a half acre to be accessed by a private road. The private road that accesses this lot serves four properties. The lot is approximately 0.25 acres. State Statute 10-9a-702 lists five criteria which must be met.

- Are there special circumstances that apply to the property that do not apply to other properties in the same district?

The property was created prior to the City of Taylorsville incorporating. Although the lot was created, it was not developed. The lot has no frontage on a public street and must be accessed by a private road. There is a private lane that serves the property. The private road does not meet the Minimum standards for a private road in Taylorsville. There are currently four properties that are accessed by the private lane.

- Has a hardship been created?

While this property has not been developed, it was legally subdivided under Salt Lake County's jurisdiction. The hardship that is being complained of is that the zoning ordinance prohibits the development of this land due to the lot size.

- Has the property owner been denied a substantial property right possessed by other property in the same district?

Because the private road is already used to access a total of four properties, this lot is required to be over a half acre in size to be served by the private road. It is possible that the zoning ordinance is creating a situation where a substantial property right is being denied.

- Does the variance affect the general plan?

Granting the variance does not substantially alter the general plan.

- Is the spirit of the zoning ordinance observed?

The spirit of the zoning ordinance is to insure an orderly pattern of development to protect the health, safety, and welfare of the public. The intent of limiting the number of lots accessed by a private lane is to insure adequate access for emergency services, properly designed roadways to handle vehicles, storm drainage, and public utilities, and to provide safe means of travel to all modes of transportation. Granting this variance may not fulfill the spirit of the ordinance. However, requiring this property to be developed by being processed as a deep lot development may be able to fulfill the intent and spirit of the law.

1.2 **Staff Recommendation:** Based upon a review of the application and the five criteria that are required to be met in order to approve a variance, **Staff recommends that the application for a variance to allow a single family home to be constructed on a lot under a half acre in size accessed by a private road be approved with the following condition:**

- That the property be developed as a deep lot development and be subject to the deep lot review policy of the City of Taylorsville.
- **Mr. Norris** explained the deep policy in response to **Mr. Wilde's** request. [18:39:03](#) The policy is in place to allow some of the larger lots that were agricultural in the past to be developed. Some of the rules looked at during the review process are building height, setbacks, etc., with the idea being that because it is a deep lot and people when they purchase property have a reasonable expectation to not have a large structure adjacent to their back yards and the deep lot policies are in place to mitigate those impacts. [18:40:30](#) **Ms. Jackson** asked where the road would be located and **Mr. Norris** said that the first 50' of the road is paved and then it is primarily a dirt road. The paving ends midway on this lot. **Ms. Jackson** asked if the applicant would be required to pave the portion of the road which is currently dirt and **Mr. Norris** said that would probably be a condition for development. She wanted to know if there was a fire hydrant and sufficient room for a turn around for fire equipment. **Mr. Norris** advised that he was unsure where the nearest fire hydrant is located but believed it was on 1130 West just south of this private drive. If this lot is developed, it is within the required 150' distance from that hydrant, therefore, the fire department would not require a turn around. [18:42:05](#) **Mr. Cook** asked if the 4800 South Small Area Master Plan would be involved with this request and **Mr. Norris** advised that this lot basically in that master plan was to remain under the current designation for both zoning and the 1ral plan. The minimum lot size for this zone is 10,000 square feet and this lot is larger than that. [18:44:17](#) **Mr. Marsh** wanted to know who owns the private lane and **Mr. Norris** advised that there are access agreements with all property owners.

1.3 **APPLICANT ADDRESS:** **Mark Curtis** was present and advised that **Mr. Norris** had covered the issues well. That he actually wanted the variance in order to sell the lot.

1.4 **SPEAKING:** None

1.5 **CLOSED FOR DISCUSSION OR A MOTION:** [18:47:07](#) **Mr. Cook** said that he visited the neighborhood and found it to be a mess and would like to require that be taken care of as part of the approval, if that is how the Board votes. He wondered if the City could possibly participate in improving the look of the area in some way. [18:48:02](#) **Mr. Lundberg** commented that this process would require deep lot approval by the Planning Commission, which could be part of the motion.

- 1.6 **MOTION:** [18:48:24](#) **Ms. Jackson** - I move that we approve the variance with the stipulation that the property be developed as a deep lot and be subject to the deep lot review policy of the City of Taylorsville. [18:49:12](#) The reasons for my recommendation are that the property was created before Taylorsville was made a City and it was created legally then and should be allowed to be developed now. The hardship is that the zoning ordinance would prohibit the development of this lot. The private road is already being used to access four lots so it would not be a hardship to allow that. It doesn't substantially alter the general plan and still insures the spirit of the zoning ordinance.
SECOND: **Mr. Marsh** [18:49:58](#)
VOTE: All members voted in favor.

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| 2. | 4B05 Gary Gilgen, 5722 South Jordan Canal Road - Request for Variance to Allow a Single Family Residence to be Constructed on a Lot Under a Half Acre Accessed by a Private Road. Nick Norris – City Planner. |
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[18:50:13](#)

2.1 **Mr. Norris** oriented on the site plan, aerial map and images. The applicant is requesting a variance in order to construct a home on a lot that is under a half acre located on a private road. Taylorsville City Ordinance allows up to three lots that are under a half acre to be accessed by a private road. The private road that accesses this lot already serves at least three homes. If the lots are over a half acre, there is no limit on the number of lots that can be served if the roadway is adequate. This lot is approximately 0.46 acres.

- Are there special circumstances that apply to the property that do not apply to other properties in the same district?

The property was created prior to the City of Taylorsville incorporating. Although the lot was created, it was not developed. The lot has no frontage on a public street and must be accessed by a private road. There is a private lane that serves the property. There are currently seven properties that are accessed by the private lane.

- Has a hardship been created?

While this property has not been developed, it was legally subdivided under Salt Lake County's jurisdiction. The hardship that is being complained of is that the zoning ordinance prohibits the development of this land due to the lot size. Due to an apparent change in the zoning ordinance, a hardship was created because the lot, which was previously legally created, could not longer be built upon.

- Has the property owner been denied a substantial property right possessed by other property in the same district?

Due to the zoning ordinance requiring a deep lot be at least one half acre in size when more than three lots are accessed by a private road, there could be a substantial decrease in the rights of the property owner.

- Does the variance affect the general plan?

Granting the variance does not substantially alter the general plan.

- Is the spirit of the zoning ordinance observed?

The spirit of the zoning ordinance is to insure an orderly pattern of development to protect the health, safety, and welfare of the public. The intent of limiting the number of lots accessed by a private lane is to insure adequate access for emergency services, properly designed roadways to handle vehicles, storm drainage, and public utilities, and to provide safe means of travel to all modes of transportation. Granting this variance may not fulfill the spirit of the ordinance. However, conditions of approval can be placed on the property that may include requiring the development to go through the deep lot review process. Doing so would satisfy the intent and the spirit of the zoning ordinance.

2.2 **Staff Recommendations: Based upon a review of the application and the five criteria that are required to be met in order to approve a variance, Staff recommends that the application for a variance to allow a single family home to be constructed on a lot under a half acre in size accessed by a private road be approved with the following condition:**

- That the development of the lot be processed under the City of Taylorsville's deep lot review policy.

2.3 **APPLICANT ADDRESS: Gary Gilgen, 1311 Morning Sun Drive, 18:53:01** Mr. Gilgen felt this proposal does comply with the spirit of the zoning ordinance. The utilities are already in the road, however there is no storm drain system there. He said he did not fully understand the deep lot rules and had a concern about that. He advised that before he bought the property he was told that the lot was .25 acre and has since found out that it is a half acre. 18:54:25. He has owned the property since May 2005 but did not know about the problems with the private lane and lot size. 18:56:33

2.4 **SPEAKING:**

1. **Shanna Gilmore, 5714 S. Jordan Canal Road, 18:57:32. Mrs. Gilmore** expressed concern about this particular lot as well as future development in that area. There is a lot of traffic there now and she was concerned about allowing the smaller size lots and felt it would ruin the aesthetic value of the neighborhood. She did not want to set a precedent for smaller size lots. She said that the community was supposed to have a say in what type of development went in there. 18:59:49 **Mr.**

Marsh asked if there was a functioning home owner's association, to which she advised that it had not been maintained since the original association director died. The neighbors put in money to maintain the road, mail boxes and snow removal.

2. **Marty Price, 5720 S. Jordan Canal Road.** [19:01:30](#) **Mr. Price** said that Mr. Gilgen was misled by the seller and the lots had to be half acre in size in accordance with the covenants made when the subdivision was established. Also included was that all homes on the east side could only be one level. One remaining problem is that the area is serviced by septic tanks and he did not know if that would work on this particular lot. [19:02:51](#)
3. **Merl Woodbury, 5650 S. Jordan Canal Road.** [19:03:41](#) **Mr. Woodbury** advised he had lived in the area since 1977 and that his lot is a half acre. He said there is no covenant in place that says you can't have less than an acre. He had a question regarding the septic tank issue. That when he first moved to his lot, he was told there was no access to hook up to the sewer. Later, he found out that there was. Mr. Edo Rotini, who lives across the street from Mr. Woodbury informed him that when I-215 was put in, an access was included from underneath the freeway. A few neighbors have since hooked onto that sewer access and there is room for others. He was happy with the septic system but wondered if Mr. Gilgen would be affected by that. [19:07:57](#). **Ms. Jackson** informed Mr. Woodbury that issue would have to be addressed before the City Council and not this body. **Mr. Norris** added that the sewer system is managed by Taylorsville-Bennion Improvement District, so the questions should be directed to them and the Health Department. [19:09:08](#)
4. [19:09:19](#) **Mr. Gilger** commented on the septic tank issue saying that in order to get a system in, the County Health Department wants a percolation test and a letter from Taylorsville-Bennion Improvement District. Subsequent contact with Taylorsville-Bennion Improvement District determined that a sewer line would not be run down that street and approved installation of a septic tank system for this lot. [19:10:38](#)
5. **Gene Ninomiya, 5718 S. Jordan Canal Road.** He advised that covenants are still in effect, which are self-renewing perpetual for the lifetime of the subdivision. [19:11:39](#). **Ms. Jackson** informed him that the Board of Adjustment cannot enforce those covenants and **Mr. Ninomiya** said that the restrictions which apply to the size of the building, out buildings, etc., still must be met according to the in-place restrictions and covenants which have been recorded with the County. [19:13:11](#) **Mr. Lundberg** advised that those covenants and restrictions are a contract between the affected owners and are not part of the deep lot review. [19:13:55](#)

2.5 **CLOSED FOR DISCUSSION OR A MOTION:** [19:14:48](#) **Mr. Cook** felt that the difference in the lot size is a minor issue. He indicated that while this seems to be a well designed plan, he felt it should be restricted to a single story home and that the design should be consistent and harmonize with the surrounding homes. He said he was inclined to grant the variance because this development would not be a detriment to the existing neighborhood. [19:16:01](#) **Mr. Lundberg** advised that those issues would be handled as part of the deep lot review before the Planning Commission. **Mr. Wilde** was curious about the size of the lot and if it were legally divided and sold off in two pieces. Apparently it is a legal lot, just is not a very large lot and doesn't meet the zoning requirement. [19:18:41](#) **Mr. Lundberg** said that he had the same question and his analysis was that if the owner that had both of the lots prior to when the recent sale occurred there and lived on one lot and had .46 acre that he wanted to put a house on as well, if it existed prior to the incorporation of the City, all of Staff's recommendations are right on point. It is too small for the zoning but it does have a hardship associated with it that he didn't create, if it is a legal lot. [19:19:22](#) **Mr. Cook** was of the opinion that the owner built his house on the larger piece without much regard for the back part and then suddenly discovered he did not leave enough room for a full half acre lot.

- 2.6 **MOTION** [19:20:40](#) **Mr. Cook** - I move that we grant the variance of File 4B05 and concerning the criteria – the special circumstances are the property was created prior to the City of Taylorsville incorporating. [19:20:54](#) The hardship has been created because the zoning ordinance prohibits development of land due to the lot size. The property owner has been denied substantial property rights possessed by other property in the same district. The variance does not affect the general plan and the spirit of the zoning ordinance is observed. I would like to add to that the provisions that it be granted as a deep lot and that it be confined to a single story structure. [19:22:02](#) That the footprint of the house be commensurate with the lot size. That the design be consistent and harmonious with surrounding houses.
SECOND: **Mr. Holman**
DISCUSSION: **Ms. Jackson** advised that she was unsure if the Board has the authority to design the structure regarding one or two stories. **Mr. Norris** advised that the State Statute

says the following from the new statute wherein they have changed the name of the Board of Adjustment to Appeal Authority: 19:22:55 "In granting a variance, the Appeal Authority may impose additional requirements on the applicant that will (a) mitigate any harmful effects of the variance; or (b) serve the purpose of the standard or requirement that is waved or modified." Based on that, this body has every right to put conditions on an approval
VOTE: All in favor.

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| 3. | 5B05 | <u>McDonald's Corporation (Farley Eskelson), 4217 South Redwood Road -</u>
Request for Variance to Reduce the Front Landscaping Setback
From 15 Feet to 0 Feet. Nick Norris/City Planner |
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19:23:34

3.1 **Mr. Norris** oriented on the site plan, aerial map and images. The applicant is requesting a variance to reduce the front landscaping setback from 15 feet to 0 feet. City ordinance requires all properties in a C-2 zone to have a minimum landscaped setback of 15 feet. The applicants are proposing to remove an existing play land to accommodate a new drive aisle that would improve the internal circulation of the property. The property is zoned C-2 and is approximately 0.94 acres. **Staff is recommending the variance be denied because the five criteria as follows cannot be met.**

- Are there special circumstances that apply to the property that do not apply to other properties in the same district?

The only topographic feature of this property is that the grade of Redwood Road is higher than the grade of the property. There are no other special circumstances that apply to this property that do not apply to other properties that are zoned C-2.

- Has a hardship been created?

It is difficult to find a justifiable hardship in this case. The hardship that is being complained of (vehicles having a difficult time leaving the site) is not a result of the zoning ordinance and was created when the site was originally constructed.

- Has the property owner been denied a substantial property right possessed by other property in the same district?

The landscaping setback in no way denies a substantial property right. The property can continue to be used as is. Any hardship that is being created is a result of the way the site was initially designed.

- Does the variance affect the general plan?

Granting the variance does not substantially alter the general plan. However, one element of the general plan is to provide aesthetically pleasing streetscapes. Reducing the landscaping at the front property line tends to reduce the aesthetic quality of the streetscape.

- Is the spirit of the zoning ordinance observed?

There are several reasons why a 15 foot front yard setback is required in the commercial zones. Improving the aesthetics of the community, minimizing the impact of vehicular traffic, allowing for clear view when entering or exiting the site, and reducing the impact of the street on the adjacent properties are all reasons why a landscaping setback is required in the C-2 zone. Eliminating the setback will have a negative impact on the intent and spirit of the zoning ordinance. In this case, the benefits of the landscaping setback are somewhat met by the play land. Eliminating the play land will further reduce the benefits of a front yard landscaping setback.

Mr. Norris advised that in reviewing the definition of landscaping that the City has, it can be argued that a play land and outdoor seating areas are something that could be included in the landscape setback. The definition says landscaping is defined as substantial live plant material but also including and not used alone, things like walkways, tables, etc. It specifically says but does not include paving for vehicular use.

3.3 **APPLICANT ADDRESS: Farley Eskelson**. 19:32:24 **Mr. Eskelson** advised that McDonald's Corporation is trying to improve the site and is very concerned with safety issues. From back of sidewalk to back of

sidewalk is 8 feet. [19:33:39](#) One problem on the site is that with the drive through, there is only one exit out and considerable stacking is created. The main concern is with ADA compliance and second is safety. That is why McDonald's is looking at taking out the play land. There is only 1' of landscaping there right now and the site is not ADA compliant. The lot sinks below the grade now and the proposal is to add stamped colored concrete similar to what the City has on their City Center property entrance. [19:36:14](#) This new proposal would add more landscaping than is there presently. McDonald's decided to increase the landscaping on the site and concentrate on the drive aisle safety and ADA compliance issues. [19:37:02](#) **Mr. Eskelson** said he had reviewed the five criteria: (1) Special circumstances would be existing site is lower than the street level and also the existing play land that was approved prior to the incorporation of Taylorsville City. If City counts the play land as landscaping, then there is 15' of landscaping. (2) Has a hardship been created? The hardship is two fold – one is the ADA compliance that needs to be taken care of and the second is the safety issue of cars. Then in talking with both Planning and the City Engineer, they like the ability of cars being able to go back around and exit onto 4200 South, hit the light and turn south. There would be more landscape with the proposal than there is right now. Stamped colored concrete in some cities is considered as landscaping. (3) Substantial property rights.... This was approved by the County prior to Taylorsville being incorporated and the need for the ADA access to the building. (4) Affect on the general plan. It will be aesthetically pleasing by adding more landscaping than is there right now. (5) Spirit of the zoning ordinance observed. [19:39:43](#) He felt that more landscaping and the fact that they are trying to make it so that it is open so that there is better site view. He added that he felt they had met the criteria for granting of this variance. [19:40:03](#)

DISCUSSION: **Mr. Cook** [19:40:09](#) asked for clarification on the denial of substantial property rights and **Mr. Eskelson** said that the biggest concern was ADA access and they did not feel the play area constituted landscaping, therefore, there would be more landscaping with this proposal. [19:40:58](#) Biggest issue was trying to make sure the sidewalk is ADA compliant. This site is problematic but McDonald's is trying to bring it into compliance. **Ms. Jackson** asked where the ADA access would be placed and Mr. Eskelson said it would be in front. [19:42:25](#) She then wanted to know why it could not be placed on the north side and he advised that was because the ADA parking is located on the east side. **Mr. Marsh** suggested reversing the drive through on the south side to make it counter-clockwise and **Mr. Eskelson** said McDonald's has never done that and probably would not do that on this site. He advised that the McDonald's located on 5600 South State Street in Murray has incorporated the same concept as is being proposed here and it has worked very well. **Mr. Wilde** felt that by adding the additional inside seating as proposed, it would compound the safety problems with more cars on site. **Mr. Eskelson** advised that the present site is over parked by about 20 stalls, so there would be no impact. He also felt the stamped concrete they propose would be counted as part of the landscaping. **Mr. Norris** advised that the stamped concrete on the City center site that **Mr. Eskelson** referred to previously, is not counted as part of the landscaping area for the site and can't count towards the 15% requirement for McDonald's site. [19:30:10](#) **Ms. Jackson** asked if the play area was added later or with the original construction of the building. **Mr. Norris** said that the applicant advised that it was installed with the original structure. [19:31:01](#) **Mr. Marsh** if on the general plan, there is a zero offset here and if the City continues to go north to 4100 South on the Redwood Road beautification project, what affect would that have on this property. That would cut back about 15' into this McDonald's site. **Mr. Norris** said that if a similar project were undertaken that far north, there would be impacts on property. As far as any time frame for the City to do that in this area, there isn't one at this point in time.

3.4 **SPEAKING:** **Joe Crown, 2034 Quailbrook Drive.** [19:56:25](#) **Mr. Crown** said many things have changed in this City and it now needs to have a strong viable business commercial center. McDonald's is a business that brings in revenue to the City. Sometimes there needs to be give and take initiated for the good of all concerned. The City may need to give up some grass for stamped concrete to allow a business to be productive for themselves and for the City. He felt the Board's task was to look at not only what the ordinances are but to set up a standard and expectation and make sure things make sense. If it makes sense to take out landscaping and put in [19:59:10](#) concrete to make the business better then it should be done. He did not think it made sense to expect McDonalds to tear down their whole building to add the 15' of landscaping.

3.5 **CLOSED FOR DISCUSSION OR A MOTION:**

- **Mr. Wilde** felt that McDonald's had built their restaurant in good faith that they were in compliance with the ordinances then in place through Salt Lake County. Since then, the ordinances have changed relative to safety and ADA and the hardship has been created by the government. [20:00:59](#) **Mr. Cook** commented he would like to approve this variance, however, had a problem with the issue of if a substantial property right was being denied. [20:01:56](#) **Ms. Jackson** did not think the criteria has been met for Board approval of this. [20:02:01](#) **Mr. Marsh** [20:02:17](#) advised that he had a real problem inasmuch as he is also a member of the Economic Development Committee, which is trying to be more business-friendly. He said that he would hate to see a corporation such as McDonald's come before the Board and be turned down. He would like to have some other means to see if this can't be brought back to the drawing table to see if the criteria can be met. [20:02:49](#) **Mr. Wilde** said that he had been to this particular McDonalds and experienced how difficult it is to

get out of that parking lot but felt there must be a solution to deal with the safety issue. [20:03:21](#) **Mr. Eskelsen** commented that the property right is the liability issue of safety and to properly comply with ADA standards. McDonald's is trying to bring ADA to the front of the building or to the south part of the building for safety. To not approve this would affect the property owner's attempt to enhance the safety of the site. **Mr. Holman** felt that the corner location impacts the property rights issue. [20:08:36](#) He was of the opinion that the only other way to deal with this was to tear down the building and start again. Not wishing to have that happen, he leaned towards granting this variance in the interest of citizen safety.

3.6 **MOTION #1:** [20:10:58](#) **Ms. Jackson** - I make a motion that we deny the applicant's request because there are no special circumstances that apply to this property. There is no hardship unless it was self-imposed at the time of the original construction. The landscaping setback requirement does not deny a substantial property right because it can continue to be used as it is. The proposed landscaping is actually contrary to the general plan. Eliminating the setback would actually have a negative effect on the zoning ordinance.

SECOND: **Mr. Lundberg.**

DISCUSSION: **Ms. Jackson** – I have tried pulling out onto Redwood Road from this location before and know how difficult it is. It is a safety issue if people turn left but I cannot imagine anyone trying to turn left and get clear across Redwood Road. I just don't see that there is anyway that we could approve this because I don't feel that any of these criteria have been met where we could approve it.

VOTE: **Ms. Jackson** – AYE

Mr. Marsh – NAY

Mr. Holman – NAY

Mr. Cook – NAY Motion fails 3 to 1.

3.7 **MOTION #2:** [20:13:40](#) **Mr. Cook** - I move that the application be approved, noting that special circumstances have been well discussed that this property is unique and the grade is a big problem, location is a problem and since it was planned prior to incorporation of Taylorsville, I think that meets our criteria. The hardship being created one of safety and ADA access, so I believe a hardship has been created in that regard. The substantial property right possessed in the same district, I would classify as one of location and because of the location, the ADA and the safety issues are enhanced there. In my opinion it does not affect the general plan and the spirit of the zoning ordinance is being observed by the careful planning of the applicant.

SECOND: **Mr. Marsh.**

VOTE: **Ms. Jackson** – NAY

Mr. Marsh – AYE

Mr. Holman – AYE

Mr. Cook – AYE Motion passes 3 to 1.

MINUTES: Review/Approval of Minutes for Board of Adjustment Meeting held June 21, 2005. **MOTION:** By motion of **Mr. Marsh**, second by **Mr. Holman**, and unanimous vote in favor, the Minutes were approved as submitted.

BOARD OF ADJUSTMENT BUSINESS ITEM: Election of Chair and Vice Chair for 2005/2006. At this point an election of officers was held by written ballot for 2005/2006. Results were: Scott Lundberg was reelected as Chair and Donna Jackson was elected as Vice Chair. [20:21:39](#)

ADJOURNMENT: 8:21 p.m.

Respectfully submitted by:

Approved in meeting held on Sept 20, 2005

Jean Gallegos, Administrative Assistant to the
Board of Adjustment